

HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VIVENDI S.A.,

Plaintiff,

v.

T-MOBILE USA, INC., T-MOBILE
DEUTSCHLAND GMBH, T-MOBILE
INTERNATIONAL AG, DEUTSCHE TELEKOM
AG, AND ZYGMUNT SOLORZ-ZAK,

Defendants.

NO. CV6-1524 JLR

PLAINTIFF'S MOTION TO COMPEL
DISCOVERY

NOTE ON MOTION CALENDAR:
07/27/07

I. INTRODUCTION

Pursuant to this Court's April 18, 2007 order, Vivendi had expected that the Deutsche Telekom defendants ("DT") would produce all responsive documents relating to any communication between T-Mobile USA and any other defendant concerning the acquisition of PTC, Vivendi, and Solorz, including such documents from the files of those DT individuals who served both as directors of T-Mobile, USA Inc., and employees of the German DT defendants. However, in their response, DT objected to the inclusion of directors in the definition of T-Mobile USA and instead defined it to include only its "officers and employees." Vivendi contends that DT's restriction improperly alters the requests approved by the Court, which included in its definition of T-Mobile USA "all of its present and former directors." In subsequent discussions and letters, DT's counsel confirmed that it did not consider T-Mobile

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1 USA directors in its definition of T-Mobile USA. DT stated that it would not produce
2 documents that were exchanged between individuals that it asserts are only German employees
3 and not within the definition of T-Mobile "simply because certain of those German employees
4 also happen to have been members of the T-Mobile USA Board." (DT Letter dated June 27, 2007
5 attached as Exhibit A)

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7 Vivendi contends that DT's position too narrowly restricts the discovery ordered by the
8 Court. Because the *forum non conveniens* requires analysis of the local interest in the
9 controversy, *Gulf Oil v. Gilbert*, 330 U. S. 501, 508-09 (1947); *Tuazon v. R.J. Reynolds Tobacco*
10 *Co.*, 433 F.3d 1163, 1182 (9th Cir. 2006), Vivendi believes it is entitled to any documents
11 relating to communications involving the acquisition of PTC, Vivendi, or Solorz exchanged with
12 other DT defendants by DT individuals who served as T-Mobile USA directors and thus
13 represented the interests of that Washington-based company. Counsels for the parties have been
14 unable to resolve this disagreement. Accordingly, Vivendi has filed this motion to compel
15 seeking the Court's guidance.
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18 II. FACTS

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20 Vivendi has identified at least two DT officials who also served during the period of this
21 controversy on the T-Mobile USA Board of Directors. Rene Obermann, the current CEO and
22 Chair of the Board of Management of DT, has been a director on the T-Mobile USA Board of
23 Directors since January 2003, and is now the Chairman of T-Mobile USA. Kai-Uwe Ricke, also
24 served as Chairman of DT's Board of Management and served on the T-Mobile USA Board from
25 May 2001 through November 2006.

III. ARGUMENT

Vivendi's discovery requests seeks information relevant to its claims, including information that appears reasonably calculated to lead to the discovery of evidence relevant to the *forum non conveniens* issue. Under well-settled corporate law, individuals such as Obermann and Ricke who hold dual corporate responsibilities in a parent-subsidary situation owe each corporation a coextensive duty of loyalty, *Weinberger v. UOP, Inc.*, 457 A.2d 701, 710 (Del.1983) and they could be expected to communicate directly and with others in the company about issues relevant to both corporations from time to time. Clearly, DT's takeover of PTC, a \$2.5 billion wireless company that has subsequently been integrated into the T-Mobile wireless network, is material to T-Mobile USA's business. Nevertheless, DT has decided that because Obermann and Ricke are both German employees of DT who only *happen* to have been members of the T-Mobile USA board, it will not produce documents relating to communications between them in Germany, even if such documents discussed DT's acquisition of PTC with the assistance of Solorz by deceiving Vivendi. More concretely, DT's view of its discovery obligations would exclude direct communications from Obermann to Ricke stating that Obermann was traveling to Seattle to discuss the integration of the PTC company into the T-Mobile global network with Robert Dotson, president and CEO of T-Mobile USA, who also serves on the board of another defendant, T-Mobile International AG. At this stage in the litigation, DT should not be permitted to withhold such communications among other defendants and directors who serve dual roles for defendant companies in both the United States and Europe. Such information may be relevant to deciding the effects this controversy has on identifiable Washington State and U. S. interests.

Moreover, Vivendi's request would not be burdensome to DT because DT has already stated that "employees of T-Mobile USA and the German DT Defendants who served as T-Mobile USA board members were not excluded from the DT Defendants' search for responsive documents" (see Exhibit A) and this suggests that DT may already have identified documents that would be responsive to Vivendi's request, absent DT's restrictive interpretation. Accordingly, Vivendi request that the Court permit it access to such discovery that may be relevant to the *forum non conveniens* issue and reject DT's attempt to circumscribe its Rule 26 obligations.

III. CONCLUSION

For the foregoing reasons, Vivendi respectfully requests that this Court enter an Order substantially in the form attached hereto and grant such other and further relief as may be just.

Dated this 11th day of July 2007.

Respectfully submitted,

Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to The Honorable James L. Robart, and serve it on all associated counsel.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 11th day of July, 2007 at Seattle, Washington.

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